

December 26, 1958

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CONCORD, N.H.

Mr. William A. Healy  
New Hampshire Water Pollution Commission  
61 South Spring Street  
Concord, New Hampshire

Dear Mr. Healy:

This is in reply to your letter of November 10, 1958 in which you request our interpretation of RSA 149:5-a as inserted by 1955:1 which provides as follows:

"149:5-a [New] Tax Exemption. In view of the general public benefits resulting from the control of pollution in the surface waters or air of the state and to further promote the purposes and objectives of this chapter, any treatment facility, device, appliance or installation (whether consisting of real or personal property or a combination of both) built, constructed or placed in operation by any person, firm or corporation in this state wholly or partly for the purpose of reducing, controlling or eliminating any source of pollution shall be exempt from taxes levied under RSA chapter 72 for a period of twenty-five years for that percentage of the valuation effective in the control of water or air pollution as the commission shall determine. Upon such determination the commission shall notify the municipality of the percentage determined by it to be subject to exemption from taxes, and the taxing officials shall thereafter reduce the assessment by a like amount."

You advise that the Water Pollution Commission has conducted a hearing in Berlin, New Hampshire in order to determine what percentage of the valuation of the new magnesium oxide recovery system recently put into operation by the Brown Company shall be exempt from taxation under this section.

From your letter and a transcript of the hearing which was held on October 22, 1958, it appears that it is the position of the City of Berlin that "percentage of the valuation effective in the control of water or air pollution" must, in this case, be interpreted to mean the percentage of pollution load actually removed from the Androscoggin River as a result of the operation of the new plant.

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On the other hand the Brown Company contends that a proper interpretation of the statute requires that the Commission confine itself to a determination of the percentage of valuation effective in the control of pollution without regard to the degree of improvement in the stream.

You have requested our advice as to which interpretation should be adopted by the Commission in making its determination of the percentage of valuation subject to exemption from taxation.

We are of the opinion that in its present form the statute contemplates that the Commission is to make its determination without regard to the extent to which any particular surface waters are improved as a result of the operation of the facility for which a tax exemption is sought.

We find nothing in the statute evidencing a legislative purpose to equate the percentage of valuation which is to be exempt from taxation to the percentage of pollution load actually eliminated from the surface waters or air of this State. Had such been the intent of the Legislature some appropriate language manifesting such intent would have been inserted.

Section 5-a exempts from taxation that percentage of valuation effective for water pollution control purposes of installations, facilities, and devices constructed or placed in operation ". . . wholly or partly for the purpose of reducing, controlling or eliminating any source of pollution." (emphasis added) The use of the words "wholly or partly" indicates that the Legislature contemplated that new industrial facilities might be erected which would incorporate water pollution control features but which would still constitute a integral part of the manufacturing process, or that water pollution control devices might be built in or added to plants or installations theretofore devoted strictly to production purposes. The obvious purpose of Section 5-a is to exempt, in such cases, only that portion of the total valuation that is designed for pollution control purposes and actually devoted to such purposes and to leave subject to taxation that portion of the valuation devoted to production or other purposes. This, we believe, is the meaning and purpose of the phrase ". . . that portion of the valuation effective in the control of water or air pollution . . ." as it appears in the statute. A key word in this phrase is the word "effective" which is defined in Webster's New Collegiate Dictionary (1956 Edition) to mean, "producing a decided, decisive or desired result"; "being in effect, operative, as a law" and "ready for service or action". In statutory construction words are to be construed according to the common and approved usage of the language. (RSA 21:2) Thus, a treatment facility is "effective" within the meaning of the statute if it is operative, ready for service and produces the desired result of elimination, reduction or control of water or air pollution irrespective of the extent to which the desired result is accomplished.

We believe it was the intent of the Legislature that a treatment plant designed, constructed and placed into operation for the sole

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purpose of pollution control, having no production or other economic features whatsoever, should be entitled to 100% exemption for a period of twenty-five years, provided the plant remains in operation and continues to perform the functions and only those functions for which it was designed. Following the City's argument to its logical conclusion, if such a plant was capable only of removing 50% of the pollution load from the stream it was designed to serve, it would be taxable for 50% of its valuation. We cannot believe the Legislature contemplated any such result.

Obviously the principal purpose of Section 5-a is to employ the device of tax exemption to induce private investment in facilities designed to confer a public benefit through abatement or control of pollution. In our view the interpretation of the statute which the City of Berlin has urged the Commission to adopt derogates from this purpose and violates the spirit of the statute.

It is to be noted that the statute exempts from taxation facilities which control, reduce or eliminate air pollution as well as water pollution. There is some evidence in the transcript that the magnesium oxide recovery system in question is effective in controlling air pollution. The City's argument that an exemption is permissible only to the extent that pollution load is removed from the Androscoggin River ignores the air pollution control features of the system.

Very truly yours,

George T. Ray, Jr.  
Assistant Attorney General

GTR, Jr/m